

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(San Carlos, CA)

BFI WASTE SYSTEMS OF NORTH
AMERICA, INC.

Employer¹

and

Case No. 32-RC-5003
(Formerly 20-RC-17734)

SANITARY TRUCK DRIVERS & HELPERS
LOCAL 350, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

¹ The Employer's and Petitioner's names appear as stipulated at hearing.

² The parties' briefs have been considered.

³ For reasons cited in detail *infra*, the Employer's offer of proof to the effect that the petitioned-for unit was based solely on the extent of organization was properly rejected by the hearing officer. The Board held in Bennett Industries, Inc., 313 NLRB 1363 (1994), that it has a duty to ensure due process for the parties in connection with the conduct of Board proceedings. In this regard, the Board provides parties with the opportunity to present evidence and argue positions concerning relevant issues. However, the Board also has a duty to protect the integrity of its processes against unwarranted burdening of the record and unnecessary delay. Here, the Employer was provided with the opportunity to make an offer of proof in support of its contentions that the Petitioner's unit was based solely on the extent of organization. I find, in agreement with the Hearing Officer, that the evidence offered by the Employer was

2. The parties stipulated, and I find that the Employer, a Delaware Corporation with an office and place of business at 225 Shoreway Road, San Carlos, California, is engaged in the business of solid waste disposal, recycling, collection and solid waste transfer. During the 12 month period ending March 27, 2002, the Employer, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and has purchased and received products, goods and materials valued in excess of \$5,000 directly from points outside California. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find that the Union involved is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties stipulated, and I find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent a unit limited to drivers, including commercial and residential refuse collection and recycling collection drivers and helpers, transfer station drivers, container delivery drivers, yard waste collection drivers, roll-off drivers, and sweeper drivers. The Employer contends however, that its operation is so functionally integrated that any appropriate unit must also include all operations employees, including all drivers, maintenance and container shop employees, transfer station and recyclery employees, spare pool employees and employees on the relief driver lists. At the hearing, the Petitioner took the position that spare pool employees

inadequate to establish that the only basis for the petitioned for unit was the extent of the Union's organization. Moreover, in its brief the Employer asserts that the Hearing Officer committed a variety of errors such as, prejudging facts, making prejudicial evidentiary rulings, and interfering with the Employer's case presentation by questioning witnesses and hurrying the Employer's presentation of evidence. However, a careful review of the record discloses that the Hearing Officer did not exceed the bounds of sound discretion in conducting the hearing and giving all parties the opportunity to fully develop the record and to state their positions.

and employees on the various driver relief lists, who spend some but not all of their time driving, should be treated as dual function employees. The parties agree that temporary/seasonal employees hired only for several months each summer should be excluded.

6. As explained in detail below, I find that the unit petitioned for, with the inclusion of the spare pool employees, is an appropriate unit based on the community of interest shared by the petitioned for employees.

THE FACTS

As noted, the Employer provides solid waste and recycling collection and disposal services to both residential and commercial customers in 11 to 13 San Mateo County municipalities.⁴ The Employer's drivers collect solid waste and recyclables from residential and commercial customers within the municipal service areas and transport the materials to the Employer's transfer station or recyclery where the materials are sorted, processed and loaded onto large semi-trucks for delivery to local landfills or recyclable end markets. The Employer's 16 acre facility in San Carlos, California, which is comprised of 3 contiguous properties located at 225, 255 and 333 Shoreway Avenue, has a 62,000 square foot solid waste transfer station, 45,000 square foot recyclery, a vehicle maintenance shop, a container maintenance shop, an office building, and an open area vehicle parking and container storage. The Employer employs approximately 350 employees, of which approximately 275 are involved in the collection and disposal operations and are divided into 4 departments: the transfer station and recyclery department, maintenance department, operations (collections) department and the builders debris department.⁵ Each

⁴ The Employer has exclusive contracts with each municipality, however those contracts are overseen by the Joint Power's Authority, an oversight board comprised of the municipalities served by the Employer.

⁵ The Employer submitted Exhibit 12 and 12(a), which lists the various positions involved in the Employer's operations. The parties agree that persons not appearing on Exhibit 12 and 12(a), such as the dispatcher, parts employee and office clerical employees, are not included in either party's proposed unit.

department has its own manager and supervisors. Department managers report directly to John Zirelli, the General Manager, who oversees the entire operation.

There is no evidence of any prior collective bargaining agreement between any labor organization and the Employer at its San Carlos facility.⁶ However, the Petitioner filed an earlier petition in 1997 to represent employees at the facility and an election was held in a larger unit than the Petitioner is currently seeking. However, the election results were set aside and no re-run election was ever held.

Drivers and Helpers

The Employer dispatches drivers and helpers on nearly 200 established residential and commercial routes who collect and transport solid waste and recyclables to the Employer's transfer station and recycler. The Employer's operations department, which is also known as the collections department,⁷ employs approximately 170 drivers and helpers and is managed by Operations Manager Gino Gasparini. Collections drivers are categorized according to type of vehicle and route driven and the department includes approximately 32 single-family dwelling residential refuse collection drivers and 50 single-family dwelling residential refuse collection helpers, 18 commercial refuse collection drivers, 18 multi-family dwelling/commercial refuse collection drivers, 15 yard waste collection drivers, 22 residential recycle collection drivers, 16 commercial recycle collections and 3 container delivery drivers. Collections drivers utilize a number of large collections vehicles, all of which require a Class B commercial driver's license, including rear end loaders, front end loaders, side loaders and container delivery trucks. The Employer operates on a one driver per vehicle basis and generally does not have helpers working

⁶ The Employer and Petitioner are parties to a collective bargaining agreement covering the Employer's employees at its Daly City, California facility, where it is engaged in operations similar to those at the San Carlos facility. The unit covered under that agreement appears to include drivers, helpers and transfer station employees.

⁷ For clarity, the department will be referred to herein as the collections department.

with drivers except on residential refuse collection routes. Helpers travel with drivers and facilitate the collection of waste. The department's 3 container delivery drivers use stake bed trucks to pick-up and deliver solid waste containers to customers. If returning to the facility with filled or partially filled containers, those containers are emptied by maintenance department employees into a rear loader vehicle, which they then empty in the transfer station 2 or 3 times per week.

The collections department dispatches solid waste collection vehicles seven days a week and recycling collection vehicles on weekdays. Collections drivers make from 1 to 4 trips through the facility to dump loads each day, averaging 2 loads per day. Collections drivers have staggered start times, between midnight and 6:00 a.m. on weekdays and between 2:00 a.m. and 6:00 a.m. on weekends. Collections drivers report to and punch in⁸ at the collections dispatch office, located in a building adjacent to the maintenance shop. Collections drivers earn \$23.60 per hour plus an addition \$5 to \$10 per day to complete paperwork associated with their vehicle and collection route. Helpers earn \$23.00 per hour and may earn an additional \$5 per day to complete paperwork associated with the route.

The Employer employs approximately 16 to 20 spare pool employees, all of whom are qualified drivers. Spare pool employees report to the collections department and typically work as drivers. They earn \$23.00 per hour and work regular full time positions but are not assigned permanent collections routes. Instead, they receive their daily assignments from the collections dispatcher. The majority of spare pool employees are assigned to driving positions each day. However, they may be assigned to work in other departments if there is no need for additional drivers on a particular day. The amount of time that spare pool employees work in non-driving/collections positions varies depending on the season. For example, during the winter

period, from around October to February, an average of 1 to 3 employees work 2 to 3 times per week in the maintenance department. During the summer period, from around February to October, an average of one employee works once a week during in the maintenance department. One spare pool employee, Kent Hendrix, works regularly in the maintenance department as a yardman/utility person cleaning the facility, running parts and responding to spills during the winter period and works as a driver/helper the rest of the year.

The builders debris department is managed by Tony Boccaleoni, Builders Debris Manager, and has approximately 25 roll-off drivers, and 3 sweeper drivers. The department is responsible for distributing and collecting large debris boxes which are used to collect solid waste, recyclables or green waste primarily at construction sites, or large residential and commercial facilities. Roll-off trucks, which require a Class B commercial driver's license, enable the driver to load and unload large 15 to 40 cubic yard containers using a tilting bed and a winch. Roll-off drivers unload an average of 6 to 7 trips per day, averaging 2 to 4 loads to the transfer station and the remainder to local landfills. The department operates 7 days a week, nearly 24 hours each day. Roll-off drivers have staggered start times from 6:00 p.m., 2:00 a.m., 4:00 a.m. and 7:00 a.m. The department is also responsible for street sweeping services which the Employer provides to several municipalities in which it has collections routes. The Employer's 3 sweeper drivers operate large sweeper vehicles, which require a Class B license, and follow established routes similar to the collections routes. Sweeper drivers earn \$24.30 per hour.

The Employer's 19 transfer truck drivers are assigned to the transfer station and recyclery department and transport solid waste from the transfer station to landfills and recyclables from the recyclery to end markets. Transfer truck drivers use large semi-truck trailers, which require operators to have a Class A commercial driver's license. Transfer truck drivers average 6 trips per

⁸ Some helpers meet the truck en route and do not come into the facility to punch in each day.

day to local landfills, which are located approximately 16 miles or 23 miles away from the facility. Transfer truck drivers earn \$25.60 per hour and work Monday through Saturday with staggered start times between 3:00 a.m. and 5:00 a.m.

While spare pool employees are the Employer's primary resource for driver fill-ins, the Employer also maintains relief driver lists which lists employees eligible to fill in on particular collection routes. Employees wishing to be on the lists apply in response to internal Employer postings for relief driver positions. When a driver position needs to be filled temporarily, the Employer generally will select a spare pool employee first and will go to the relief driver lists only if no spare pool is reasonably available. However, if the position is on a transfer truck or front end loader vehicle, the Employer will select a driver from the transfer station relief driver list or the front end loader relief driver list rather than seeking a spare pool employee. The majority of those employees on the relief driver lists are spare pool employees or other drivers. However, non-drivers can also apply and be awarded a position on the relief driver list. Employees assigned to the relief driver lists, if not otherwise trained, will be trained in the particular needs of the position which they will relieve. The Employer also utilizes temporary/seasonal employees to work on collection routes during the busier summer months. As noted, *supra*, neither party is seeking inclusion of these employees in the unit.

All drivers spend 70% to 80% of their time en route away from the facility. They are guaranteed 8 hours pay per day worked, though they are allowed to leave at the conclusion of their routes. Drivers wear uniforms provided by the Employer which consist of pants, boots, shirts and reflective vests. All drivers are required to perform vehicle pre-checks and post-checks and complete a Vehicle Condition Report (VCR), which is required by the Department of Transportation and is used to record the condition of the vehicle and note any problems with the

vehicle. Drivers are paid an additional \$5 per day for completing paperwork associated with the truck, including the VCR. Drivers or helpers earn an additional \$5 per day for completing paperwork associated with the route. Completed VCR forms are submitted by the drivers to the maintenance department and are used to determine whether the vehicle requires any repairs or maintenance. Drivers may also speak directly with maintenance employees to explain any mechanical problems, request changes in their equipment, or they may call in from their route to speak with a mechanic regarding an emergent problem they are having in the field. Drivers do not perform repair work, lubrication, or maintenance of vehicles beyond adding fuel or other fluids to their vehicles.

Transfer Station and Recyclery

The transfer station and recyclery department is managed by Chris Valbusa, the Transfer Station and Recyclery Manager, and has approximately 48 employees. The transfer station operates as an unloading and holding area for the transfer of solid waste and green waste to landfills. Collections vehicles and members of the public enter the transfer station, after passing the gate attendant where their loads are weighed. Materials are then dumped directly onto the floor of the transfer station. Transfer station spotters and sorters assist in the flow of traffic through the transfer station by directing incoming vehicles where to unload their materials. Sorters pull recyclable materials from the solid waste. Loader operators, assisted by spotters, use front end loader tractors to move materials around the facility and to push materials through large holes in the transfer station floor into waiting transfer station trucks, which are parked in a tunnel underneath the transfer station. Transfer station drivers transport and unload the materials at local landfills. The transfer station operates from 2:00 a.m. to 6:00 p.m. Monday through Saturday, from 8:00 a.m. to 5:00 p.m. on Sunday and is open to the public 7 days a week from 8:00 a.m. to

5:00 p.m. The public comprises less than 10% of the traffic through the transfer station and recyclery. Transfer station employees use a collection vehicle, which is permanently stored in the transfer station, to bale cardboard pulled from the solid waste. A transfer station employee with a commercial license will drive the vehicle to the recyclery to empty it approximately 3 to 6 times per month.

The Employer's 2 transfer floor spotters direct vehicle traffic in the transfer station and facilitate the transfer of solid waste to the transfer trucks by monitoring the loader pushing the waste through the holes in the transfer station floor. They earn \$24.30 per hour and work a regular shift from 4 a.m. to 12:00 p.m. or 1:00 p.m. Spotters receive on-the-job training of not more than one week period in which they shadow an experienced employee to learn the duties of the position. The Employer's 4 transfer floor loader operators utilize a tractor to consolidate and move solid waste and to load transfer trucks. They receive 2 weeks to a month of on-the-job training to learn the duties of their position. They earn \$25.60 per hour and work 8 hour shifts beginning at 2:00 a.m., 4:00 a.m., and 8:00 a.m. on weekdays and one shift on Saturdays. There are 10 full time and 1 part time transfer station sorters who sort solid waste and recyclable yard waste using bobcat (small) tractors, forklifts, hand tools and their hands. They move sorted materials around the transfer station and help direct the flow of traffic. They receive 2 weeks to a month of on-the-job training to learn the duties of their position and are trained to operate bobcats, forklifts, and learn how to operate, not necessarily drive, the rear-end loader vehicle which they use to bale recyleables. They start out earning \$12.50 per hour and receive annual wage increases of approximately 3 to 5%. Sorters are the only employees involved in operations that have a varied wage scale; all other classifications earn one single wage. Sorters work an average of 40 hours per week on fixed shifts from 8:00 a.m. to 5:00 p.m., 7 days per week. The 1 transfer

station utility employee performs general clean up maintenance around the facility, clears the facility of litter and uses a pick-up truck to clean litter along Shoreway Road in front of the facility. This employee may also assist in controlling the flow of traffic and may fill in in various transfer station positions such as a loader or spotter if needed. This position receives on-the-job training of a 3 days or less time period shadowing an experienced employee.

The recyclery is a staging area used for the unloading, sorting and repackaging of recyclable materials. The recyclery operates virtually all day Monday through Friday and is open to the public from 5:00 a.m. to 5:00 p.m. Drivers and members of the public deposit recyclable materials in the recyclery, where they are sorted by employees provided by the county. Once sorted, the Employer's 6 recyclery equipment operators use bobcats, forklifts and a baler to process recycled materials and load them onto transfer trucks for transport to end markets.⁹ Equipment operators earn \$24.30 per hour and receive 2 weeks to 1 month of on-the-job training and are trained to use the bobcats, balers and forklift. The Employer's 1 equipment facility maintenance employee maintains the recyclery equipment, including the sorting and processing equipment, loaders and tractors, and performs electrical, plumbing and other facility maintenance work on the recyclery and the vehicle maintenance building. This employee may fill in as a back-up equipment operator if needed. The Employer's 1 "buy back" attendant is responsible for buying residential recyclable materials from members of the public. The buy back attendant earns \$16.30 per hour and works 8:00 am to 5:00 p.m. Monday through Friday. The Employer's 3 scale house/gate attendants control entry to facility, stage vehicles at entry, check all vehicles entering the facility with waste or recyclable materials, and record the weight and origin of all waste and debris vehicles that enter the facility. An average of 300 to 500 vehicles pass through

⁹ The Employer recently purchased a new baler machine, however, on occasions when the baler breaks down employees will use a collection vehicle to bale cardboard.

the facility each day. Scale house attendants earn \$24.30 per hour and work one shift from 4:00 a.m. to 12:00 p.m. and two shifts from 8:00 a.m. to 5:00 p.m. and receive 2 weeks of on-the-job training.

Maintenance Department

The maintenance department is divided into two shops, a vehicle maintenance shop and a container maintenance shop, both of which are managed by Dennis Franco, the Maintenance Manager. The maintenance shop is responsible for maintenance and repair of the Employer's 270 vehicles. The maintenance shop has approximately 13 general mechanics and 4 preventative maintenance inspector (PMI) mechanics. The general mechanics maintain and repair all types of vehicles owned by the Employer and respond to road service calls. They perform vehicle maintenance work such as repair brakes, suspensions, starters, clutches, idle adjustments, exhaust systems, air lines and compressors lights, gauges and signals. PMI mechanics inspect vehicles and perform basic preventative vehicle maintenance, such as changing fluids. There are approximately 16 vehicles per mechanic at the facility. Since the ratio of vehicles to mechanics is so high, the Employer sends larger, more complicated or specialized repairs, such as transmission or engine repair, to outside contractors. In such instances, general mechanics will remove engines and transmissions from the vehicle for shipping and repair.

The maintenance department operates from 6:00 a.m. to 4:00 a.m. on weekdays with three staggered 8 hour shifts which start at 6:00 a.m., 12:00 p.m. and 8:00 p.m. The maintenance shop operates on Saturday from 4:00 a.m. until 12:00 p.m. and Sunday from 7:00 p.m. until 3:00 a.m. All mechanics work a minimum of 40 hours a week. General mechanics earn approximately \$24.79 per hour and the mechanics average one half hour overtime per week and maintenance

shop welders average one hour of overtime per week. PMI mechanics earn \$23.00 per hour and do not work overtime.

Mechanics are not required to have formal training though one mechanic has a certification from a trade/vocational school and 2 more are certified to do brake work. The Employer does not require mechanical experience prior to hiring, though it would likely hire an experienced applicant over an applicant with no experience. Three (3) current mechanic employees had experience prior to hiring. Newly hired general mechanics spend 1 to 2 months in on-the-job training working with an experienced mechanic. Newly hired PMI mechanics spend approximately 3 to 4 weeks in on-the-job training working with an experienced PMI mechanic. Two (2) general mechanics specialize in welding and spend approximately 60 to 70% of their workday engaged in welding activities. Other mechanics spend approximately 5% of their day welding. Welders receive 1 month of on-the-job training in welding. Mechanics spend approximately 2/3 of their day working on maintenance and repair of vehicles and items reported on the VCRs. The remainder of their time is spent welding or performing other tasks.

Mechanics use specialized tools including air jacks, air drills, circuit testers, air compressors, various types of wrenches and pliers, screwdrivers, hammers, socket sets, flashlights, volt testers, brake adjusting tools, chains, forklifts, overhead cranes, jack stands and grease guns. PMI mechanics use a more basic set of tools including wrenches, screwdrivers, grease guns and grease fittings. When engaged in welding, mechanics use arc and acetylene welders, welding helmets, gloves, glasses, wrenches, hammers, screwdrivers. All maintenance employees wear a uniform of coveralls and boots issued by the Employer and wear reflective vests on service calls or when outside of the department.

Certain aspects of the mechanics' work requires them to drive a vehicle and in some cases a vehicle requiring a commercial driver's license. For example, mechanics perform road tests following repairs and perform service calls to repair a vehicle en route or switch vehicles with a driver that has a broken down vehicle. Ten (10) of the 17 maintenance employees maintain a Class B license and 4 maintain a Class A license. Maintenance employees also service 6 vehicles that are located at the Ox Mountain Landfill and will drive a pick-up truck to the landfill and return to the facility in the vehicle needing repairs. The Employer's Maintenance Manager estimated that mechanics spend 5% of time off site and spend approximately 1 to 2% of their time driving on a road test or on a service call. In instances when a mechanic picks up a vehicle for repair, the truck may need to be taken to the landfill and its contents dumped. Maintenance employees may drive a road service truck or a tire service truck, neither of which require a commercial driver's license, on road service calls which do not require bringing a replacement vehicle. The Employer records the number and time spent on all road calls made by maintenance and container shop employees. During the six month period from October 2001 through March 2002, there were an average of 25 road calls per month and each call averaged one hour, including driving time to and from the facility.

The container shop has approximately 8 welders and one utility employee who are responsible for cleaning, repairing, welding and painting the employer's roughly 9, 000 to 9,500 containers. They empty any refuse from containers before they repair them. Each day, between 1 and 3 employees spend 2 to 3 hours per day emptying solid waste from containers. Container shop employees earn \$23.00 per hour and work 2 weekday shifts from 5:00 a.m. to 1:30 p.m. and 12:00 p.m. until 8:00 p.m. The container shop has no graveyard or weekend shifts. 5 of the 9 container shop employees have a Class B license and 2 have a Class A license. Container shop

employees will go on road calls to clean up hydraulic fluid or oil spills. Welders utilize arc and acetylene welders, welding helmets, glasses, gloves, and various tools including wrenches, hammers, and screwdrivers. When painting, they utilize respirators, gloves and goggles. Container shop employees receive roughly 3 to 4 weeks of on-the-job training and welders receive 1 month of on-the-job training in welding. Container shop employees wear coveralls and boots and also wear reflective vests on service calls.

Employee Training and Benefits

As noted, all transfer truck drivers and transfer truck relief drivers are required to have a Class A commercial driver's license. All collections drivers, helpers, relief drivers, and at least 3 employees in the recyclery are required to have a Class B license. No other positions are required to have class A or B license to perform their regular duties. The Employer requests that sorters obtain their Class B driver's permit and license, however, they have not been required to do so to keep their jobs. In an effort to encourage employees to obtain commercial permits the Employer will provide on-the-job training and preparation for the Department of Motor Vehicles licensure test. Training is done when the Employer needs to fill a driving or relief position or if a mechanic needs training. Other drivers provide on-the-job training to new employees and the transfer station supervisor administers tests and can sign off on a commercial license permit. Other than the transfer station truck drivers, employees in the transfer station and recyclery do not operate vehicles requiring a commercial driver's license as part of their regular duties. The Employer requires all its employees that operate equipment to attend a monthly safety meeting. The Employer schedules 8 meetings, which are held in the maintenance department and cover the same topics, over the course of 2 days and employees are free to attend any meeting they choose. The

Employer holds an annual safety awards banquet which all employees are allowed to attend. The criteria for safety awards apply to all operations employees equally.

Drivers are paid for a minimum 8 hours per day regardless of whether or not they finish their route early and leave. All drivers average 35 to 40 hours per week. All other operations employees average 40 hours per week. However, they may be allowed to leave up to ½ hour early on Fridays or holidays and still receive a full 8 hours pay. Employees working on afternoon and graveyard shifts receive and are paid for an extra ½ hour of work to compensate them for the less desirable schedule.

The Employer has an employee handbook which is distributed to all employees. All employees receive the same set of benefits, including vacation, holidays, and sick days and the Employer offers employees the same options for medical, dental and other insurance. Employees ask their department supervisor or manager for time off. Collections employees ask the dispatcher for time off. Employees are directed to call their department manager if they are unable to arrive at work. There is no evidence whether scheduling requests for leave or vacation by employees in one department are affected by requests of employees in other departments. Each department has its own time clock and break area, though employees are not restricted from using those in different departments.

The Employer utilizes employer-wide postings to fill vacant positions and prefers to hire internally. As part of the hiring process, all new employees are required to pass a written and verbal test, which tests basic communications skills, must have a clean driving record, and pass a pre-employment physical and drug and alcohol screen. New driver employees receive approximately one hour of training from a mechanic which includes demonstrating how the Employer's equipment functions and how to complete a VCR. Sorters are the Employer's primary

entry level position. Since 1999, 16 sorters have permanently transferred to the collections department as drivers; 10 transferred in 1999, 4 in 2000, 2 in 2001 and thus far none have transferred in 2002. The Employer granted one former driver's request to be permanently transferred to a sorter position for personal reasons related to his health. There are 12 employees in the transfer station and recyclery that were formerly drivers. Those transfers that were explained in detail were made at the request of the employee due to the employee's desire for a different job, usually related to the physicality of the job or a medical problem. Twelve (12) of the transfer station drivers transferred from other departments, 11 transferred from other driving positions and one transferred from a mechanic position. Eight (8) maintenance employees are former drivers, one transferred into the department 15 to 20 years ago, 2 transferred in 1994, one transferred in 95, 96 and 97, and the most recent transfer dates back to 1998 or 1999. These transfers were achieved through the voluntary application of interested employees, at least two of the transfers were related to injury or loss of commercial license. No current transfer truck drivers were former mechanics although the Employer previously had one transfer truck driver that had been a mechanic.

The Employer has utilized temporary transfers to compensate for staffing needs. During a 5 month period from October 2001 to March 2002, 6 maintenance employees from the container shop filled in as drivers. All 6 were on the relief driver lists for the vehicles they operated. During the same period, 3 rear loader drivers worked in the maintenance shop on one or two days in the same week in November 2001; 2 transfer station sorters worked on a front end loader - though it is not clear if these employees worked as drivers or helpers or if they were on the relief list; 1 transfer truck driver filled in as loader operator on Thanksgiving and the two following days; and 8 employees filled in as transfer truck drivers - 7 were relief drivers, 5 were drivers in their regular

position and the 3 that were not, were relief drivers. In the past 18 months no recyclery employees have filled in as a driver or helper.

The Employer has, upon employees' requests, allowed several employees to work overtime in positions outside their regular department. A roll-off driver performs fleet inspections under the maintenance department. He is backed up by another roll-off driver. A rear end loader driver works approximately 10 hours of overtime per week washing buses. Another rear end loader driver works approximately 10 hours of overtime per week as a utility person checking fluids, dumping trucks, running parts and responding to spills. This overtime work is charged to the department in which the work is being performed.

POSITION OF THE PARTIES

As noted, Petitioner seeks to represent a unit limited to drivers and helpers, including commercial and residential refuse collection and recycling collection drivers and helpers, transfer station drivers, container delivery drivers, yard waste collection drivers, roll-off drivers, and sweeper drivers. The Employer contends that its operation is so functionally integrated that any appropriate unit must also include all its operations employees, including all drivers, maintenance and container shop employees, transfer station and recyclery employees, spare pool employees and employees on the relief driver lists. At the hearing, the Petitioner took the position that spare pool employees and employees on the various driver relief lists, who spend some but not all of their time driving, should be treated as dual function employees. The parties agree that temporary/seasonal employees hired for several months each summer should be excluded.

ANALYSIS

The issue raised by the parties' conflicting unit contentions is whether the petitioned-for unit is **an** appropriate unit for the purpose of collective bargaining under the Board's traditional

community-of-interest analysis. If that question can be answered in the affirmative, then it does not matter that the larger unit sought by the Employer may also be appropriate. *See Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962); and *A. Russo & Sons, Inc.*, 329 NLRB No. 43 (1999).

Initially, the Employer argues that the petitioned-for unit should be ignored because it is based solely on the Union's extent of organization and further urges that a system-wide unit should be presumed based on the Employer's contention that it functions as a public utility. I find no support for these contentions. Section 9(c)(5) of the Act prohibits making "extent of organization" a "controlling" factor in bargaining unit determinations. The Board has denied unit requests where, unlike here, the only apparent basis for the petitioned-for unit was the extent of the petitioner's organization of the employees. *See NLRB v. Quaker City Life Insurance Co.*, 319 F.2d 690 (4th Cir. 1963); *Metropolitan Life Insurance Co. v. NLRB*, 380 U.S. 438 (1965); *New England Power Co.*, 120 NLRB 666 (1958). Such is not the case here, where the Petitioner seeks to represent a drivers only unit and exclude other non-driver operational employees. Unlike the cases relied upon by the Employer, this case is not one where the only apparent basis was the extent of the petitioner's organization of the employees. For example, in *Terminal Systems*, 127 NLRB 979 (1960), the petitioner sought to exclude particular drivers from a drivers unit, based solely on the amount those employees worked. The Board's ultimate determination that those drivers could not be excluded from the unit was based squarely on the fact that the drivers were all engaged in the same work and because they shared a strong community of interest, thus, there was no apparent reason for their exclusion other than extent of organization. Unlike *Terminal Systems*, *supra*, the Petitioner here is seeking to represent a drivers only unit and exclude maintenance and other operations employees, not other drivers. Such units are analyzed based on traditional

community of interest factors and standards, and those are the object of the inquiry in this proceeding. *See Overnite Transportation*, 322 NLRB 723 (1996). The fact that the Petitioner may have decided to organize just a drivers-only unit instead of a larger unit is not determinative. In fact, the Board recognizes, and the Employer acknowledges, that extent of organization is often a factor in what unit a petitioner seeks to represent. Under Board law, even if the petitioned for unit is, in part, based on the extent of organizational efforts, it does not follow that such a unit is necessarily defective or that in designating that unit as appropriate the Board is thereby giving any, much less controlling, weight to a union's extent of organization. *Dundee's Seafood, Inc.*, 221 NLRB 1183 (1976); *Consolidated Papers*, 220 NLRB 1281 (1975); *Bell Industries*, 139 NLRB 629, 631 fn. 7 (1962). Likewise, the fact that the Petitioner sought a larger unit in the prior election is immaterial to the current determination as well. The Board is not bound by a principle analogous to that of the judicial doctrine of res judicata in matters involving a determination of the appropriate bargaining unit and even a prior determination as to the appropriate bargaining unit would not preclude a re-determination of the unit when a later petition may be filed. *Pacific Manifolding Book Company, Inc.*, 93 NLRB 726, 727(1951); *Union Lumber Co.*, 53 NLRB 567 (1943). Moreover, in the prior proceeding involving these parties, the question as to whether the unit sought therein was appropriate was never at issue, since the parties stipulated to the scope of the unit. In addition, the prior stipulated unit is of even less import at this juncture since no bargaining relationship was established as a result of the prior election, no collective bargaining had been conducted between the parties, and there is no evidence of any bargaining history in any unit at this location.

Finally, I find no merit to the Employer's contention that a system-wide unit should be presumed based on the Employer's contention that it functions as a public utility. Indeed, while

the Board has held that a system-wide unit is the optimum bargaining unit in public utilities industries, *See Colorado Interstate Gas Co.*, 202 NLRB 847 (1973); *Louisiana Gas Service Co.*, 126 NLRB 147 (1960); *Montana-Dakota Utilities Co.*, 115 NLRB 1396 (1956), the Employer has adduced no probative evidence or legal support to demonstrate that it is in fact a public utility. While the Employer may provide a service to municipalities and assist them in reaching legislatively mandated recycling targets,¹⁰ the Employer is a private sector enterprise engaged in the collection, sorting and transport of refuse and recycleables, not a public utility. I therefore, reject the Employer's unsupported contention that a system-wide unit should be presumed on that basis.

As explained in detail below, I find that the unit petitioned for, with the inclusion of the spare pool employees, is an appropriate unit based on the community of interest shared by those positions and that other employees do not share such a strong community of interest as to require their inclusion in the petitioned-for unit.

In analyzing this issue, I have considered the evidence that the employees in the Union's proposed drivers' unit and the employees in the Employer's proposed unit all have certain common interests, i.e., they are provided the same basic employment benefits and are bound to the same rules and regulations. However, the significance of these common interests is lessened by the fact that other employees not included in the either proposed unit, e.g., the dispatcher, parts employee and clerical employees, also share these same interests. In addition, while operations employees are all required to have enough basic communication skills to pass the same written and verbal pre-employment tests, have a clean driving record, and pass a pre-employment physical

¹⁰ State law AB 939 calls for a reduction in the amount of solid waste that goes to the landfills. The Employer assists the municipalities it serves in reaching diversion goals set by AB 939 through recycling programs that the Employer offers for residential and commercial diversion and by removing recycleables from solid waste deposited at the transfer station.

and drug and alcohol screen, the Employer provides extensive on-the-job training to employees that is unique to the position that they will work in.

It is evident that the Employer's drivers share a community of interest. All drivers spend the vast majority of their time away from the facility driving large vehicles requiring commercial driver's licenses. They spend their day driving established routes and are allowed to leave for the day at the conclusion of their routes and are guaranteed 8 hours pay. They are required to complete the same paperwork associated with their vehicles and driving routes and receive additional pay for doing so. They are required to maintain their commercial licenses, including annual physical exams and maintaining clean driver's records. Other than the transfer truck drivers, drivers are in distinct departments and are separately supervised.

While there are some factors present to support the inclusion of maintenance department employees in the petitioned-for unit, such as common benefits, some overlapping areas of training, some instances where maintenance employees have worked temporarily on drivers' routes, interaction between drivers and the maintenance employees who repair their vehicles, and occasional driving done by maintenance employees on road tests and service calls, I conclude these factors do not require their inclusion. The unit requested by Petitioner from which maintenance employees are excluded is an appropriate unit as well. The Employer argues that mechanics perform common duties with drivers, citing evidence of driving by mechanics and the fact mechanics are compelled to obtain a commercial driver's license. However, most of the driving cited by the Employer is not the type of driving performed by the drivers in the petitioned-for unit. Rather, it is driving performed in connection with test drives and the emergency repair of vehicles. In similar situations, the Board has deemed such driving insufficient to require inclusion of mechanics in a petitioned-for unit of drivers. *See Overnite Transportation*, 322 NLRB 347 (1996).

Unlike drivers, maintenance employees generally spend their entire day at the Employer's facility performing functions which are related to the repair and maintenance of the Employer's equipment and which are entirely different from the duties performed by drivers and helpers. Maintenance employees use tools that drivers do not use, wear a different type of uniform and generally report to work and punch in at a different location. While maintenance employees are paid similar wages, the various positions receive different fixed wage rates and maintenance employees are not eligible for the additional pay drivers receive for performing paperwork duties associated with their vehicles and routes. Maintenance employees receive specialized on-the-job training unique to their repair and maintenance duties. While there are instances of overlapping training at the monthly safety meetings, there is no set meeting that employees are required to attend together, but instead each employee may choose from a number of meetings over the course of two days. While mechanics provide one hour of training to new drivers and helpers, this training occurs only once during the course of a driver/helper's career with the Employer. Other than the common oversight of the general manager, drivers are subject to entirely separate supervision. Maintenance employees have work hours and duties that are different from the drivers, are categorized by the Employer in a separate department within its broader operations and there is no evidence of common supervision, even on a temporary basis.

I have considered the evidence that maintenance employees have occasionally worked in the operations department on a temporary basis, that employees have transferred permanently from one department to another, that on rare occasions a driver may work in the maintenance department and that these two groups of employees are in contact with each other to communicate regarding breakdowns. However, I find that the evidence of contact and/or interchange between drivers and maintenance employees, while perhaps sufficient to establish that the Employer's

larger unit may also be appropriate, is insufficient to establish that a unit limited to drivers is not appropriate. *See Id.; Novato Disposal Services*, 330 NLRB 632 (2000). In coming to this conclusion, I note that the evidence as a whole indicates that drivers and maintenance employees have very defined and distinct work duties and tasks and there is very little routine interchange in their work assignments. In this regard, there is no evidence of any regular daily transfer of employees between the drivers and maintenance departments and in those instances when maintenance employees have worked as drivers/helpers they have done so pursuant to their voluntary application and training as relief drivers. Permanent transfers are also achieved through an employee's voluntary application and the evidence disclosed in the record indicates that they occur on an average of less than one per year with none taking place in the last 3 years. The only evidence of regular work performed by drivers in the maintenance department is work done on a voluntary overtime basis, at employees' request, and is not associated with work they do in their regular position. Moreover, the work they perform on an overtime basis is not the primary type of repair and maintenance work performed by maintenance department employees, such as repairing vehicles or containers but is instead fleet inspection work, checking fluids and dumping trucks - similar to the work performed regularly by drivers - and delivering parts and responding to road calls. Accordingly, I conclude that maintenance employees do not share a sufficient community of interest with the drivers to mandate their inclusion in the unit.

I also find that the non-driving transfer station and recyclery employees do not share a sufficient community of interest with the drivers to warrant their inclusion in the unit. Unlike the transfer station drivers who share many common job duties and characteristics with other drivers, the non-driving transfer station and recyclery employees spend virtually no time away from the facility, and virtually no time driving vehicles requiring a commercial license or driving regular

routes. While a few employees might spend some time each day on the access road that runs in front of the facility clearing litter, such work is substantially different from the work performed by regular drivers. While the non-driving transfer station and recyclery employees utilize loaders, forklifts and bobcat vehicles in their work, they are smaller vehicles than those utilized by drivers and do not require a commercial drivers license. The non-driving transfer station and recyclery employees work different hours and are subject to separate supervision than most drivers. While the transfer station drivers are classified in the transfer station department they spend the vast majority of their day away from the facility.

I have also considered the evidence that non-driving transfer station and recyclery employees have occasionally worked in the operations department on a temporary basis, that employees have transferred permanently from one department to another, and that employees in these two departments communicate with each other regarding the dumping of materials in the recyclery and transfer station. However, I find that this evidence of contact and/or interchange between drivers and transfer station and recyclery employees, while perhaps sufficient to establish that the Employer's larger unit may also be appropriate, is insufficient to establish that a unit limited to drivers is not appropriate. *See Overnite Transportation*, 322 NLRB 347 (1996). In coming to this conclusion, I note that the evidence as a whole indicates that drivers and non-driving transfer station and recyclery employees have very defined and distinct work duties and there is very little routine interchange in their work assignments. In this regard, there is no evidence of any regular daily transfers of employees between the drivers and transfer station and recyclery departments and in those instances when non-driving transfer station and recyclery employees have worked as drivers or helpers they have done so only pursuant to their voluntary application and training as relief drivers.

While there is substantial evidence that sorters have permanently transferred to the collections department as drivers, these transfers have been through the voluntary application of sorters desiring to move into driving positions. Such transfers, which were sought by employees for their own convenience, are not given great weight by the Board in determining the degree of employee interchange. *Renzetti's Market, Inc.* 238 NLRB 174, 175 fn. 8 (1978). In this regard, I also note that the Board has concluded that permanent transfers are a “less significant indication of actual interchange” than temporary movement, and that such transfers are entitled to less weight. *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, 323 NLRB 665, 667 (1997). Moreover, the number of permanent transfers is intermittent and has dropped significantly and persistently from 10 in 1999, to 4 in 2000, 2 in 2001 and to none in 2002. Other employees transferring from collections to the transfer station and recyclery department did so only at the employee's request which generally were made for personal or health related reasons. No non-driving transfer station or recyclery employees permanently transferred directly to a transfer station driver position, while only two worked on a temporary basis during the 5 month period described in detail on the record and only by virtue of their placement on the relief transfer station driver list. Only one (1) transfer truck driver filled in as loader operator for three days around the Thanksgiving holiday. Moreover, no recyclery employees filled in as a driver or helper in the prior 18 months, and while two sorters worked on a front end loader, it is not clear if they worked as helpers or drivers or if they were on the relief list. I find such evidence insufficient to mandate their inclusion in the petitioned-for unit. Accordingly, I conclude that non-driving transfer station and recyclery employees do not share a sufficient community of interest with the drivers to mandate their inclusion in the unit.

The record as a whole suggests that spare pool employees' primary duties are to work as drivers and that they spend a majority of their time engaged in driving. Spare pool employees are encompassed within the collections department, reporting directly to that department at the start of each day, receiving their daily assignments from the collection department dispatcher. The majority of spare pool drivers are engaged in driving everyday. It is well established that the Board may include dual-function employees in a unit if they regularly perform duties similar to those of unit employees in sufficient degree to demonstrate a substantial interest in the unit's wages, hours, and working conditions. *Berea Publishing Company*, 140 NLRB 516 (1963). Here, I find that the spare pool employees regularly perform similar duties as other included drivers during substantial portions of their working time and are subject to the same supervision and working conditions as other drivers. Accordingly, I conclude that the spare pool employees do share such a strong community of interest with the drivers as to mandate including them in the unit of drivers.

On the other hand, the evidence reveals that relief driver employees share a lesser community of interest with the drivers inasmuch as their driving duties are not regular or substantial. I find that the record as a whole demonstrates that employees on the relief driver lists spend the majority of their time performing duties associated with their principal regular position and perform relief driving duties only on a sporadic and intermittent basis, when a fill-in driver is needed and generally only when no spare pool employee is reasonably available to drive. The 5-month period represented at the hearing indicates that there was, at most, an average of one person working in a relief position for each day during that period. And it appears that most relief employees worked between 0 to 5 days in a relief position for the entire period. Moreover, when they did perform driving duties in a relief capacity, the relief drivers did so only occasionally and

without regularity, pattern, or consistent schedule. Under these circumstances, I find that the relief drivers do not spend a substantial period of their time devoted to the type of work done by the employees in the petitioned-for unit, and as such, relief drivers do not share a sufficient community of interest that would warrant their inclusion in the unit. *See Berea Publishing Company, supra; Davis Transport*, 169 NLRB 557, 562 (1968); *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 702 (1967); *Martin Enterprises*, 325 NLRB 714, 715 (1998); *W. C. Hargis & Sons, Inc.*, 164 NLRB 1042, 1047 (1967); *Pacific Lincoln-Mercury, Inc.*, 312 NLRB 901, 902 (1993); *Manhattan Construction Company*, 298 NLRB 501, 502 (1990).

In light of all of the above, I find that the Employer's drivers, helpers and spare pool employees share a sufficient community of interest such that they constitute an appropriate unit for purposes of collective bargaining. *See Overnite Transportation*, 322 NLRB 347 (1996). Accordingly, I find that the following employees of the Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act and that it is appropriate to direct an election in such a unit:

All full-time and regular part-time drivers and helpers, including Transfer Truck Drivers, Single-Family Dwelling Refuse Collection Drivers, Single-Family Dwelling Refuse Collection Helpers, Commercial Refuse Collection Drivers, Multi-Family Dwelling/Commercial Refuse Collection Drivers, Residential Yard Waste Collection Drivers, Residential Recycle Collection Drivers, Commercial Recycle Collection Drivers, Container Delivery Drivers, Roll-Off Drivers, Sweeper Drivers and Spare Pool Employees, employed at the Employer's San Carlos, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 240 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued

subsequently, subject to the Board's Rules and Regulations.¹¹ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by SANITARY TRUCK DRIVERS & HELPERS, LOCAL 350, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employers with the undersigned, who shall make the list available to all parties to the

¹¹ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

election. In order to be timely filed, such list must be received in the **NLRB Region 20 Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103-1735**, on or before **June 28, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **July 5, 2002**.

DATED AT Oakland, California this 21st day of June, 2002.

Veronica I. Clements
Acting Regional Director
National Labor Relations Board
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